No. 12097

In The United States Court of Appeals

For the Ninth Circuit

R. E. SHELDON, as Executive Director, Unemployment Compensation Commission of Alaska, ERNEST F. JESSEN, ANTHONY ZORICH and GEORGE VAARA as the Unemployment Compensation Commission of Alaska, UNITED SMELTING, REFINING AND MINING COMPANY, a corporation, ALASKA LAUNDRY, INC., a corporation, PACIFIC AMERICAN FISHERIES, INC., a corporation, HEALY RIVER COAL CORPORATION, a corporation, JUNEAU SPRUCE CORPORATION, a corporation, WESTERN FISHERIES COMPANY, a corporation, WELLS ALASKA MOTORS, a co-partnership, and JOE COBLE, doing business as The Pioneer Cab Company, and all others similarly situated,

Appellants,

vs.

FELTON H. GRIFFIN,

Appellee.

APPEAL FROM THE DISTRICT COURT FOR THE TERRITORY OF ALASKA, THIRD DIVISION

BRIEF FOR THE APPELLANT

RALPH J. RIVERS
Attorney General for Alaska
J. GERALD WILLIAMS
FAULKNER & BANFIELD
MEDLEY & HAUGLAND
W. C. ARNOLD
Attorneys for Appellants
1011 American Building
Seattle 4, Washington

THE ARGUS PRESS, SEATTLE

No. 12097

In The United States Court of Appeals

For the Ninth Circuit

R. E. SHELDON, as Executive Director, Unemployment Compensation Commission of Alaska, ERNEST F. JESSEN, ANTHONY ZORICH and GEORGE VAARA as the Unemployment Compensation Commission of Alaska, UNITED SMELTING, REFINING AND MINING COMPANY, a corporation, ALASKA LAUNDRY, INC., a corporation, PACIFIC AMERICAN FISHERIES, INC., a corporation, HEALY RIVER COAL CORPORATION, a corporation, JUNEAU SPRUCE CORPORATION, a corporation, WESTERN FISHERIES COMPANY, a corporation, WELLS ALASKA MOTORS, a co-partnership, and JOE COBLE, doing business as The Pioneer Cab Company, and all others similarly situated,

Appellants,

vs.

FELTON H. GRIFFIN,

Appellee.

APPEAL FROM THE DISTRICT COURT FOR THE TERRITORY OF ALASKA, THIRD DIVISION

BRIEF FOR THE APPELLANT

RALPH J. RIVERS
Attorney General for Alaska
J. GERALD WILLIAMS
FAULKNER & BANFIELD
MEDLEY & HAUGLAND
W. C. ARNOLD
Attorneys for Appellants
1011 American Building
Seattle 4, Washington

THE ARGUS PRESS, SEATTLE

INDEX

TABLE OF CASES

STATUTES

No. 12097

In The United States Court of Appeals

For the Ninth Circuit

R. E. SHELDON, as Executive Director, Unemployment Compensation Commission of Alaska, ERNEST F. JESSEN, ANTHONY ZORICH and GEORGE VAARA as the Unemployment Compensation Commission of Alaska, UNITED SMELTING, REFINING AND MINING COMPANY, a corporation, ALASKA LAUNDRY, INC., a corporation, PACIFIC AMERICAN FISHERIES, INC., a corporation, HEALY RIVER COAL CORPORATION, a corporation, JUNEAU SPRUCE CORPORATION, a corporation, WESTERN FISHERIES COMPANY, a corporation, WELLS ALASKA MOTORS, a co-partnership, and JOE COBLE, doing business as The Pioneer Cab Company, and all others similarly situated,

Appellants,

vs.

FELTON H. GRIFFIN,

Appellee.

APPEAL FROM THE DISTRICT COURT FOR THE TERRITORY OF ALASKA, THIRD DIVISION

BRIEF FOR THE APPELLANT

OPINION BELOW

The opinion of the district court (R. 49) is reported at 78 F. Supp. 466.

JURISDICTION

This is a suit to enjoin the Unemployment Compensation Commission of Alaska from enforcing certain provisions of the Alaska Unemployment Compensation law. A permanent injunction was entered October 7,

1948 (R. 115). Petition for allowance of appeal was filed October 7, 1948, and order allowing appeal was signed October 7, 1948 (R. 125). The jurisdiction of the district court was invoked under the law of June 6, 1900, c. 786, sec. 4, 31 Stat. 322, as amended, 48 U.S.C. Sec. 101, 41 Stat. 1203. The jurisdiction of this Court rests on section 128 of the Judicial Code, as amended, 28 U.S.C. Sec. 225 (a).

QUESTIONS PRESENTED

1. Whether the district court of Alaska should not take judicial notice of and give full weight to an act of the legislature of Alaska which has been certified and enrolled and published as a law of the Territory.

2. Whether it became the duty of the court to refer to the legislative journals to determine if an enrolled bill had been lawfully enacted because of the fact that the Governor of Alaska had not signed and approved the bill.

3. Whether it is proper for the court to make a search of the legislative journals to determine if a bill had had a "sufficient reading" in the House where the evidence conclusively showed that after the passage of the bill by both Houses it was forwarded to the Governor and by him returned with the intent that it become law without his signature and thereafter was regularly certified and forwarded to the Secretary of Alaska for permanent filing and became a fully enrolled bill.

4. Whether the legislative journals are competent to prove or disprove the sufficiency of the question of readings where the organic act of Alaska does not require that the reading of a bill be entered in the journal.

5. Whether it is not a sufficient compliance with legislative proceedings in Alaska for the legislative body on a third reading of a bill to read it by number only.

6. Whether the plaintiff, who has no interest in the litigation other than by virtue of his alleged status as a resident and taxpayer of Alaska, is a person with sufficient interest to maintain a suit which challenges the validity of a public law and seeks to restrain the members of the Alaska Unemployment Compensation Commission from enforcing said law.

SPECIFICATION OF ERRORS

The assignment of errors (R. 122) may be summarized as follows:

1. The court erred in finding that the plaintiff is a citizen and taxpayer of the Territory of Alaska.

2. The court erred in failing to adopt the conclusive presumption rule and in failing to take judicial notice of the fact that Chapter 74 of the Session Laws of Alaska, 1947, was the duly enrolled, printed and published law of Alaska and in failing to grant a judgment of dismissal.

3. The court erred in examining and considering the journals of the legislative bodies of the Territory of Alaska to determine whether a bill had been lawfully enacted.

4. The court erred in its conclusion that Chapter 74 of the Session Laws of Alaska, 1947, was invalid because it failed to have three readings in the House of Representatives.

5. The court erred in entering a restraining order

enjoining the defendants from granting credits to the employers of Alaska as provided in said Chapter 74.

6. The court erred in granting a judgment to the appellee for the reason that appellee had no interest in the litigation sufficient for him to maintain the action.

STATEMENT

This action was instituted by the appellee by complaint verified July 11, 1947, to enjoin the enforcement of an amendment to the Unemployment Compensation Code of Alaska which was adopted by the legislature in its regular session of 1947. That amendment provided for a system of credits to be granted to qualified employers of labor on an experience merit basis. The suit was directed against the executive director and the individuals who comprised the members of the Alaska Unemployment Compensation Commission.

Appellee alleged that he was a resident and taxpayer of Alaska and generally that the legislature had passed an invalid law which if it were enforced by the defendants would result in a wrongful and unlawful loss of funds of the Territory of Alaska, and which would result in loss to the taxpayers thereof. The complaint alleged four grounds of invalidity of the act. Briefly these are:

1. That the enacting clause was inadequate.

2. That the bill was not lawfully passed because a motion to reconsider in the House was not given proper consideration.

3. That the bill was vetoed by the Governor.

4. That the bill in its passage by the House did not

receive three separate readings as required by the organic act of Alaska.

Appellee prayed that the said law be found invalid and that the defendants and each of them be enjoined and restrained from issuing credit notices or otherwise establishing credits for employers under the provisions of said Act.

A complaint in intervention was regularly filed by the intervenors who alleged that they were employers of labor in Alaska, contributors of large sums of money to the Unemployment Compensation fund, and directly affected by the litigation. Upon due proceedings an order was entered granting intervention (R. 32). Intervenors specifically denied that appellee was a taxpayer or a resident of Alaska and defendants and intervenors denied generally the allegations of the complaint. Upon these pleadings issue was joined.

The cause came on for trial at Anchorage, Alaska, on April 20, 1948. The appellee offered no evidence whatsoever regarding his status or interest in the litigation. The court took the matter under advisement and on June 28, 1948, filed a written opinion in which the court found that the enacting clause was adequate; that the motion to reconsider in the House was given proper consideration and that the bill was not vetoed by the Governor. The court in its memorandum stated that the conclusive presumption rule as announced in the the case of *Field v. Clark*, 143 U.S. 649, would be applied and that it would be bound to dismiss the cause of action "had the Governor actually signed the bill in approval thereof." The court further found that be-

cause of the fact that a carbon copy of a letter from the Governor of Alaska to the Senate was the only letter of transmittal of the bill when it was sent to the Secretary of Alaska for permanent filing it then became a duty of the court to refer to the legislative journals to determine if the bill had been validly enacted; that after construing the entries in the journal of the House, the court concluded that the said bill did not have a third reading in compliance with the organic act of Alaska and that the bill was not lawfully enacted. The court suggested that a judgment in accordance with the memorandum opinion should be entered.

Thereafter, upon motion duly made by the defendants and the intervenors, the court on August 5, 1948, granted a motion to reopen the case and on that date heard further evidence. The evidence presented by defendants and intervenors consisted of documents to supply proof of the fact that the Governor had returned the bill in question with the intent that it should become law without his signature and that it was thereafter forwarded to the Secretary of the Territory for permanent filing and was regularly authenticated, published and proclaimed as a law of Alaska. The court took the matter under advisement.

Thereafter on September 10, 1948, in open court, the court rendered its oral opinion stating that it adherred to its original memorandum and directed that findings and judgment be presented (R. 145). The judgment was entered and filed on October 7, 1948 (R. 115). This appeal followed (R. 125).

There was introduced in evidence the House and Senate journals covering the Eighteenth Session of the

Alaska legislature. These are not reprinted in the transcript of record. Approximately eight pages of the journal only are pertinent to this case and for the convenience of the court, appellants annex pages 843 to 850 of the House journal and Rule 54 of the House to this brief as an appendix.

SUMMARY OF ARGUMENT

I.

The legislature of Alaska at its Eighteenth regular session which convened on the 27th day of January, 1947, enacted Senate Bill 105. This bill was regularly certified by the presiding officers of the legislative bodies and became an enrolled bill. It was permanently filed with the Secretary of Alaska and thereafter was published as Chapter 74 of said sessions laws.

Appellee instituted the action in a representative capacity as a taxpayer. Under the applicable decisions the court should take judicial notice of the law and conclusively presume that all proper procedural steps were taken and that there were no irregularities in the passage of the law. The enrolled bill or conclusive presumption doctrine precludes a consideration of the legislative journals for the purpose of invalidating the official certification of the bill.

II.

The court below refused to apply the enrolled bill doctrine for the reason that the Governor of Alaska had not signed the bill in approval thereof. The absence of the Governor's signature is not pertinent to

the question. The bill became a law without the Governor's signature. The conclusive presumption rule applies when the lawmaking department has done everything necessary to complete the record of the enactment of the law. This record was completed when the bill was permanently filed with the Secretary of Alaska.

The enrolled bill doctrine has been applied in numerous cases where the Governor permitted a bill to become law without his approval. And also in numerous instances where a law has been enacted over a disapproving message or a direct veto. In none of those cases has the Governor's signature appeared on the bill in approval thereof.

III.

It was error for the court to make a complete and comprehensive examination of the journals for the purpose of determining whether the legislature had strictly complied with the procedural requirements. The court may examine the journals in an attempt to construe the language used or to arrive at the legislative intent or to learn the history of legislation. Such examination is not made for the purpose of invalidating legislation.

When the court in this case had found from the journals, or other evidence, that the legislative assembly had regularly certified the bill and that it had been forwarded to the Secretary of Alaska for permanent filing, the search should have ended. Senate Bill 105 was certified by its legal custodian, properly authenticated and complete in form. Judicial investigation ends at that point.

IV.

The legislative journals are not competent to prove or disprove the question of whether the bill had actually had a third reading. This is the rule of the enrolled bill doctrine. A further reason is that there is no requirement of the Organic Act or Constitution of Alaska which makes it mandatory to record in the legislative journals the manner of reading of a bill or of the fact that such reading occurred. Neither has the legislature by its own rules required that such entry be made. The journal is kept by the chief clerk or under his direction by some other employee of the legislature. These entries are merely clerical in nature. The trial court examined the journal of the House and found an entry signed by the chief clerk that the bill was read the third time by number only. On the strength of that single entry, the law was declared invalid. Evidence of that type should not be used to destroy the effect of the solemn authentication and enrollment of the bill by the legislative officers.

V.

Senate Bill 105 had received two complete readings in the House. It then came before that body for final consideration. On this occasion, the bill was discussed fully. Several amendments were proposed. These were read section by section. A general debate was had. The amendments were voted down. Appellants contend that during the course of this debate and discussion the Senate Bill was fully read and that the record so shows.

The Constitution does not in terms direct that the

reading shall be at length, or in full, or out loud, or by any particular person. Under the circumstances where a bill has been under consideration continuously by the House for several hours, such record shows a sufficient reading of the bill.

VI.

Appellee alleged that he was a resident and taxpayer of Alaska; that the legislature had invalidly passed Senate Bill 105; that its enforcement would result in a loss of funds to the Territory and taxpayers of Alaska. Appellee did not prove that he was a resident and taxpayer of Alaska or that he had any interest in the suit.

The question raised in the case is purely political. The appellee has no property rights or other interest which were put in jeopardy. Nor did the appellee sustain injury or loss by reason of the enforcement of the law.

The courts will only consider actions challenging legislative enactments where the party who invokes the power of the court shows that he has sustained some injury as a result of its enforcement. Such a situation is entirely lacking in this action. The appellee has no justiciable interest and therefore the court does not have jurisdiction to entertain this action.

ARGUMENT

I.

The District Court Erred in Failing to Take Judicial Notice of a Law of Alaska and in Failing to Give Full Force and Effect to Said Law.

It is the contention of the appellants that the court below should have taken judicial notice of Chapter 74 of the Session Laws of Alaska, 1947 under the enrolled bill doctrine. It would then follow that the appellee's complaint should have been dismissed.

The evidence conclusively shows that the said law, known as Senate Bill 105, was duly passed by the Senate and the House; that it was then regularly sent to the Governor for his consideration. The Governor did not sign or approve the bill. Neither did he veto it. Instead the Governor sent a letter to the President of the Senate in which he notified that body that he had transmitted the bill to the office of the Secretary of Alaska for permanent filing and that the bill became a law without his signature. The bill was regularly enrolled and certified by the presiding officers of both houses and was regularly permanently filed with the Secretary of Alaska and was thereafter by him officially published as a law of Alaska under his official authentication.

The appellee introduced but one witness at the trial of the case. This was the Secretary of Alaska who identified a certified copy of the said bill and testified that it had been passed by the legislature and was lodged in his official custody as Secretary (R. 133). Appellee offered no other testimony except such as

could be found from a search of the legislative journals which were introduced as exhibits. Appellee then rested. Under the decisions hereinafter set forth, upon this state of the record, the enrolled bill doctrine would require that the action be dismissed.

Appellants introduced no oral testimony but did file certain affidavits and certificates all of which tended to show that the bill did become law without the Governor's signature and that it was duly certified and permanently filed as required by law (R. 102-140, 141, 142). The court below instead of applying the enrolled bill doctrine has searched the legislative journals in a deliberate attempt to ascertain if the legislature has complied with all procedural and constitutional requirements. Thus also there was overlooked the further rule that the courts will indulge every presumption in favor of a law.

This case should be controlled by the decision of *Field v. Clark,* 143 U. S. 649, 36 L. ed. 294 and the numerous other authorities from a majority of the jurisdictions throughout the country.

Field v. Clark involved an action by certain importers who challenged the validity of a tariff act adopted by Congress. From a judgment against them in the Circuit Court of the Northern District of Illinois, said importers appealed to the United States Supreme Court. One of the main contentions of the appellants was that the Congressional records disclosed that the bill as approved by the President was not the same bill that was certified by the presiding officers of the legislative bodies and that the bill was not a valid act. The

court specifically determined that it was necessary for it to "inquire as to the nature of the evidence upon which a court may act when the issue is made as to whether a bill * * * was or was not passed by Congress." The court further noted that the appellants rested their contention upon the fact that the Constitution required that "each house shall keep a journal of its proceedings, and from time to time publish the same, * * * and the yeas and nays * * * be entered on the journal" and commented that it was assumed in the argument that the object of this clause was to make the journal the best, if not conclusive evidence upon the issue as to whether the bill was in fact passed by the two houses of Congress.

But the court held that such was not the rule to be followed. The court refused to consider the legislative journals or the congressional records and adopted the conclusive presumption rule and stated at page 303 (36 L. ed.):

> "* * * The respect due to co-equal and independent departments requires the judicial department to act upon that assurance, and to accept, as having passed Congress, all bills authenticated in the manner stated; leaving the courts to determine, when the question properly arises, whether the act, so authenticated, is in conformity with the Constitution."

The court then discussed the argument that if access be not had to the journals, it would create possibility for conspiracy on the part of the presiding officers and states, page 303:

> "Judicial action based upon such a suggestion is forbidden by the respect due to a co-ordinate

> branch of the Government. The evils that may result from the recognition of the principle that an enrolled Act, in the custody of the Secretary of State, attested by the signatures of the presiding officers of the two houses of Congress, and the approval of the President, is conclusive evidence that it was passed by Congress, according to the forms of the Constitution, would be far less than those that would certainly result from a rule making the validity of congressional enactments depend upon the manner in which the journals of the respective houses are kept by the subordinate officers charged with the duty of keeping them.
>
> "The views we have expressed are supported by numerous adjudications in this country * * *".

Judgment of the Circuit Court was affirmed.

The *Field* case has never been overruled or qualified by the Supreme Court. It was followed in *Lyon v. Woods*, 153 U. S. 649 where the Supreme Court again adopted the enrolled bill and applied the rule to an Act of a Territory (Ariz.) of the United States.

The entire doctrine is completely discussed in a well-considered opinion of the Supreme Court of New Mexico in the case of *Kelley v. Marron*, 153 Pac. 262. In that case a taxpayer challenged the validity of an Act and contended that the journal of the house showed that the legislature did not comply with the Constitutional requirement that a bill should be publicly read and entered in the journal. That court discussed the matter fully and quoted at length from a great number of decisions, and concluded that the statute having become enrolled by the legislative body, the court would

not concern itself over the question of the procedure followed by the legislative body during the course of its enrollment. The enrolled bill was given full weight.

The rule has been applied in a great number of cases from numerous jurisdictions. Since the points hereafter discussed in points II and III are so closely related to point I, we will not burden the court with further citations here. All of the following cases are pertinent to this part of our brief.

Applying the conclusive presumption rule to the instant case, it is apparent that error has been committed by the court in searching the legislative journals and concluding therefrom that Chapter 74 of the Session Laws of Alaska, 1947, was not validly enacted notwithstanding its enrollment and authentication.

II.

The Absence of the Signature of the Governor Upon the Bill Did Not Give the Court Occasion to Examine the Journals.

The court below recognized that *Field v. Clark* is the controlling authority (R. 57) and that the enrolled bill doctrine would have been applied in this case "had the Governor actually signed the bill in approval thereof." But that since the governor's signature was lacking the "unimpeachable" presumption was completely overthrown and that it then became necessary for the court to examine the journals.

Appellants contend that the signature of the Governor is not a prerequisite to the validity of a law. The legislative enactments become law in those cases where

the Governor permits it to become such without his signature and also in those cases where the legislature passes the bill over the Governor's veto. In both of those instances the signature of the Governor would not appear on the bill in approval thereof yet the bill becomes law. It becomes a law when the law making power has done everything necessary to complete its enrollment and filing as a duly enacted law.

A careful reading of *Field v. Clark* and an examination of the authorities there cited convinces us that the Supreme Court did not intend to, and did not, limit the application of the enrolled bill doctrine only to cases where the bill was actually signed by the Governor. The decision does not by its terms contain any such statement. The facts disclose that the President had actually signed the bill but no point was made of this feature nor was there any discussion concerning it.

Field v. Clark in support of its conclusions cited thirteen cases all of which had applied the enrolled bill doctrine. These case are: *State ex rel. v. Young*, 32 N. J. L. 29; *Chosen Freeholders v. Stevenson*, 46 N. J. L. 173; *Standard U. C. Co. v. Attorney General*, 46 N. J. L. Eq. 270; *Sherman v. Story*, 30 Cal. 253; *People v. Burt*, 43 Cal. 560; *Ex parte Wren*, 63 Miss. 512; *Weeks v. Smith*, 81 Me. 538; *Brodnax v. Groom Comm.* 64 N. C. 244; *State v. Swift*, 10 Nev. 176; *Evans v. Browne*, 30 Ind. 514; *Edgar v. Randolph Cnty. Comm.*, 70 Ind. 331; *Pac. R. R. Co. v. Governor*, 23 Mo. 353; *Louisiana Lottery Co. v. Richoux*, 23 La. Ann. 743.

In not one of those cases was a point made of the presence or absence of the Governor's signature on the

bill involved. In approximately half of the cases the facts merely recited that the bill had passed the legislature and had received the approval of the Governor. However, in several of the cases the facts disclosed that the signature of the Governor was not on the bill. Nevertheless, the rule was applied.

In *Weeks v. Smith* the Governor had vetoed the bill. Obviously this case negatives the contention that the Governor's signature was necessary.

In *Brodnax v. Groom Comm*, while there was no discussion over the question of signing, the specific question was stated by the court (64 N. C. 247) as follows:

> "Suppose an act of Congress is returned by the President, with his objections, and the Vice President and the speaker of the House certify that it passed afterward by the constitutional majority: Is it open for the courts to go behind the record and hear proof to the contrary?"

We note that the question does not include reference to the approval by the Governor.

In *Evans v. Brown* the facts are almost identical with the instant case. There the Governor permitted the law to become effective without his signature. He wrote a letter which accompanied the bill when it was transmitted to the Secretary of State for filing and stated that he understood that the legislaure was not legally in session when it passed the bill and that therefore he understood the bill would not become a law. The complainants specifically pleaded portions of the journal entries in their attempt to set aside the bill.

The Indiana Supreme Court stated the questions as follows (95 Am. Dec. 712):

> "1. Must the courts of this state take judicial notice of what is and what is not the public statutory law of the state?
>
> "2. When a statute is authenticated by the signature of the *presiding officers of the two Houses*, will the courts search further to ascertain whether such facts existed as gave constitutional warrant to those officers to thus authenticate the act as having received the legislative sanction in such manner as to give it the force of law?" (Italics ours)

The court concluded it could not look beyond the enrolled and authenticated act and stated, page 717:

> "This exact question has received the consideration of other American courts, who have thoughtfully and with careful steps reached the conclusion that the authentication of the presiding officers of the legislature is conclusive evidence of the proper enactment of a law, and that they cannot look elsewhere to falsify it: *State ex rel. etc. v. Young*, 5 Am. Law Reg., N. S., 679 (Sup. Ct. N. J.); *Pacific R. R. v. Governor*, 23 Mo. 353 (66 Am. Dec. 673); *Duncombe v. Prindle*, 12 Iowa, 1; *Eld v. Gorham*, 20 Conn. 8; *Fouke v. Fleming*, 13 Md. 392; *People v. Supervisors of Chenango*, 8 N. Y. 317; *People v. Devlin*, 33 Id. 269."

In the case of *Edgar v. Randolph County Comm.*, there was involved purely a question of the construction of language used in the legislation. The court applied the rule and stated that whenever a statute has been authenticated by the signature of the *pre-*

siding officers of the two legislative houses it will be given conclusive weight. Clearly that case negatives the contention that the Governor's signature is essential.

The Missouri case of *Pac. R. R. Co. v. Governor* was a case where the measure was passed over a veto. Therefore, the decision expressly negatives the statement of the court below in the instant case, that the measure must be approved by the Governor in order to apply the doctrine.

Thus it appears that in five of the said thirteen cases the Governor's signature did not appear in approval of the bill. In none of the cases was there any suggestion that the signature of the Governor was pertinent to the question of whether the bill would be applied.

There are numerous additional cases to the effect that the signature of the Governor is not one of the steps required in order to make applicable the conclusive presumption rule. In the Arizona case of *Clark v. Boyce* (1919) 185 Pac. 135 the bill was not signed or approved by the Governor. It carried a notation as follows:

> "This bill having remained with the Governor ten days, (Sundays excluded) after the final adjustment of the legislature, and not having been filed with his objections, has become a law this 26th day of March, 1919."

and was signed by the Secretary of State. The court stated on page 138:

> "The Legislature has all power not prohibited to it by the state or federal Constitution. The

Governor can exercise only such power as is granted to him by the state Constitution. Functioning as a part of the Legislature, his acts are negative in their nature. Under no Constitution, federal or state, so far as we are advised, is his approval absolutely essential, for they all contain provisions by which bills may become laws without his signature—as where he keeps the bills in his possession without action for three days or five days or ten days as the case may be, the legislature being in session. His veto is not absolute, but qualified, as, under most Constitutions, the Legislature may pass the bill over his veto.*Harpending v. Haight*, 39 Cal. 189, loc. cit. 201, 13 Pac. St. Rep. 189, loc. cit. 201, 2 Am. Rep. 432; 12 R. C. L. 1005. According to the appellee's contention, the Governor must either sign the bill or veto it. Failing to do either, the bill is destroyed even though it may have received the unanimous vote of both houses. We think such a construction would indict the people of doing something far from their intention. As we shall see later, no Governor of the state has thought or assumed he possessed such absolute power of veto, nor have the people or the legislature thought so.

"If we give this troublesome expression a literal meaning, it involves the negation of what we know to be facts. We know, notwithstanding, that the Governor has nothing whatever to do with a bill, emergent or otherwise, until after its final passage by the Legislature. 'Every measure when finally passed shall be presented to the Governor for his approval or disapproval,' is the language of the Constitution (section 12, art. 4). While he is an arm of the Legislature, he has nothing to do with the introduction or passage of bills. He cannot put

into a bill or take out of a bill an emergency declaration or anything else."

The case of *State ex rel. Dunbar v. State Board*, 140 Wash. 433, has many features making it exceedingly pertinent to the case at bar. There the Governor had originally vetoed the bill. After its passage over the veto, it was not recertified by the presiding officers of the legislature. Neither did it carry any statement of these facts when it was transmitted to the Secretary of State for permanent filing. The Washington court stated at page 445:

> "An examination of these sections shows that it is mandatory that the presiding officers of the two houses of the legislature shall sign the bill upon its original passage, but that there is no provision for such signature upon a repassage after veto; that, after a veto, '*it shall become a law*' when two-thirds of the members of each house have voted to pass it over the governor's veto. The way is left open for the legislature to provide by rule for the manner of authentication. There is no question that if the constitution had provided, upon a repassage of a vetoed bill, that the designated officers should sign it, the absence of such signature on the enrolled bill in the secretary of state's office would render that bill invalid; but, in the absence of any constiutional provision relating to this matter, the legislature under its inherent power has the right to adopt any procedure that it sees fit by which to transmit to the secretary of state the information that the bill has been finally passed and present the enrolled bill to that office for filing.'

The court applied the enrolled bill doctrine.

To the same affect, see

Reed v. Jones, 6 Wash. 452, 34 Pac. 201;

Smithie v. State (Florida 1924) 101 So. 276.

In *Bennet Trust Co. v. Semgstacken* (Ore. 1911) 113 Pac. 863, the Oregon court took judicial notice of the public and private acts of the legislative and executive departments and concluded therefrom that the bill having passed the legislative assemblies was presented to the Governor; that he did not return it to the legislative within five days; that under such circumstances, the bill became law without his signature. The court stated at page 867:

> "Under such circumstances, the Constitution expressly says the bill shall be a law without his signature. We conclude that in respect to the act in question the legal process of making it a law was complete when the Governor did not return the bill to the house whence it originated within five days from the date it was presented to him, and that all its provisions, including the emergency clause, became effective at once on the completion of that process."

In *State ex rel. Galman v. Lewis* (S.C. 1936) 186 S.E. 625, the court after adopting the enrolled bill rule and citing *Field v. Clark*, stated at page 629;

> "The enrolled bill appears entirely regular on its face. It was duly signed by the President of the Senate and by the speaker of the House of Representatives, was duly and regularly passed by the constitutional majority required under its recommendation when returned to the House and the Senate by the Governor with his objections, and filed in the office of the Secretary of State."

In *Goddard v. Kirkpatrick* (Okla. 1943) 141 P. (2d) 292, the bill was not signed by the Governor but was permitted to become law without his signature. The court stated:

> "Upon the issue of whether this court will look upon the enrolled bill signed by the presiding officers of the two houses of the legislature and in effect approved by the Governor's acquiesence and his affirmative act in transmitting the bill to the official registry, we may bear in mind the language of the Supreme Court of the United States in *Field v. Clark*, 143 U.S. 649. This court committed itself to the doctrine there stated in the early decision of *Atchison, Topeka & Santa Fe Railroad Co. v. State*, 113 Pac. 921."

The same rule was also applied by that court in *in re Block*, 149 P.(2d) 269, where the bill also was permitted to become law without the Governor's sugnature.

See also

Perkins v. Lucas, 197 Ky. 1, 246 S.W. 150.

III.

The Court Below Erred in Examining the Journal of the House to Determine if the Bill Had Three Readings.

The court below held that since it could not apply the enrolled bill rule it became necessary to make a complete and comprehensive study of the journal (R. 58). Such search disclosed that the bill did not have a sufficient third reading in the house.

The answer to the foregoing is found by applying the rule which of course does not permit examination of the journals to impugn the enrollment and authen-

tication of the bill. Appellants further contend that when the court has examined the journals and the journals give satisfactory (and in this case, conclusive) proof that the Governor had permitted the bill to become a law without his signature, the investigation should have ended.

The courts do, on occasion, examine the legislative journals. Such examination however is for the purpose of construction, or to arrive at legislative intent, or to sustain legislation. It is not made for the purpose of invalidating the certificate of authentication.

The case of *Edgar v. Board of County Comm., supra,* one of the cases cited in *Field v. Clark,* is directly in point. In that case, the legislature had passed an act fixing additional salaries for County Auditors. The question arose over the construction of the language used in the act. It was also contended that the bill was invalid. The court after discussing, and adopting the enrolled bill rule stated at page 338:

> "* * * That the authentication of the presiding officers of the legislature is conclusive evidence of the proper enactment of a law; and that the courts cannot look elsewhere to falisfy it. *Evans v. Brown,* 30 Ind. 514. But it has never been held by this court that for the *purpose of construction or interpretation, and with a view of ascertaining the legislative will* and intention in the enactment of a law, the courts may not properly resort to the journals of the two legislative bodies to learn therefrom the histories of the law in question, from its first introduction as bill until its final passage and approval." (Italics ours)

In *Hovey v. State* (Ind.) 21 N. E. 21, a mandamus

action was brought against the Governor of Indiana who defended on the ground that the bill involved was not properly authenticated and attempted to show that the bill had never been signed by the Governor. The court stated at page 26:

> "* * * An Act may become a law in several ways without the signature or approval of the Governor, and where, as in this case, an enactment is certified by the legal custodian, properly authenticated and complete in form, *judicial investigation is at an end.*" (Italics ours)

In *Perkins v. Lucas, supra,* the Kentucky court refused to look to the entries in the journals to overthrow the presumption established by the due authentication.

In *Pac. R. R. Co. v. Governor, supra,* also one of the cases cited in *Field v. Clark,* the court said at page 681:

> "Upon the whole, we are of the opinion that the objections taken against the mode of passing this law by the general assembly on its reconsideration are untenable; that the Constitution and law precludes an inquiry as to the existence of such objections. * * *".

So also in *McDonald v. State,* 80 Wisc. 407, 50 N. W. 185 the court held that the courts will take judicial notice of the contents of the journals of the two houses of the legislature far enough to determine whether an act published as law was actually passed but that (page 186)

> "When it appears that an Act was so passed, no inquiry will be permitted to ascertain whether the two Houses have or have not complied strictly with their own rules in their procedure * * *".

In *Wrede v. Richardson* (Ohio 1907) 82 N. E. 1072, the charge was made that the bill had never been presented to the Governor. The court refused to entertain such evidence stating

> "That the Secretary of State is the official custodian of our statutory laws, and we have long been familiar with the rule founded upon statutes *that his certification is conclusive as to what that law is.*" (Italics ours)

All of the foregoing authority is but a reiteration of the logic and reasoning of the cases following the enrolled bill doctrine. The court erred in considering the journal entries in an attempt to invalidate the law.

IV.

The Legislative Journals Are Not Competent to Prove or Disprove the Question of Whether the Bill Was Actually Read.

In discussing this part of our brief, we will refrain from reference to any of the decisions from jurisdictions which follow literally the doctrine of *Field v. Clark.* Those decisions obviate discussion of this point.

There are certain jurisdictions wherein the courts do resort to the legislative journals in an attempt to determine whether a law was validly enacted. However, in most of these jurisdictions a distinction is made betwen the cases where the Constitutional provisions with respect to journal entries may be held to be mandatory or simply directory. If the Constitution requires that the voting in the house be recorded in the journal such may be held to be a mandatory requirement. But if the Constitution does not require the fact to be recorded in the journal, then such a provision is

held to be directory only. The courts should not consider the journal entries unless the Constitutional provision is mandatory.

The Organic Act of Alaska (Sec. 479 C. L. A. 1933) imposes a duty on the legislature to keep a journal. It does not require that there be entered in the journal the fact that bills are read or the number of times that they are read and therefore the entry in the journal of the fact of reading is not an item required to be made at all. Appellants contend that the entry actually made in the journal can have no force in the instant case.

This identical point is involved in the case of *Vinsant v. Knox,* 27 Ark. 266. The Arkansas Constitution provided that every bill should be read three times on three different days in each house. It was contended that the journals affirmatively showed non-compliance. The court stated at page 278:

> "* * * but there is no Constitutional provision that their observance should be evidenced by an entry upon the journals. If there were such a provision the failure of the journals to show the observance of these requirements would doubtless render invalid the legislative acts. *But in the absence of such provision,* it must be presumed that these requirements have been complied with, whether evidenced by an entry upon the journals or not so evidenced, the bills having been put upon their final passage and passed." (Italics ours)

That court further stated "that every reasonable intendment" is to be taken in favor of the validity of the act.

We quote from *State v. Carley* (Fla. 1925) 104 So. 577 at page 580:

> "The Constitution provides (Art. 3, Sec. 17) that 'every bill passed by the legislature' shall be read by its sections on its final passage in each house, but it does not require an entry to be made in the journals that a bill was so read; therefore the courts will conclusively presume that a bill was read by its sections on its final passage in each house, unless the contrary clearly appears by the journals."

and in *Davidson v. Phelps* (Ala. 126) 107 So. 86, the court stated at page 88:

> "We find a suggestion * * * that the journals of the house and senate discloses that the bill in its passage was not read three times in each house as required by Section 630 of our Constitution. *It is not necessary to the validity of a law that the journal disclose that the bill was read three times.*" (Italics ours)

The court upheld the act.

This rule is reiterated *in re Ellis* 55 Minn. 401, 23 L.R.A. 287, where the court states (page 292 A.L.R.)

> "Every bill signed and approved as required by the Constitution is presumed to have been properly passed. And, as held in *State v. Peterson*, 38 Minn. 143, the absence from the journal of either house of an entry showing that a particular thing was done, is no evidence that it was done, *unless the Constitution required the entry to be made;* and there is no such requirement in respect to the reading of a bill on three different days, or its passage under a suspension of the rule. The objection therefore is not well taken." (Italics ours)

The case of *Sherman v. Story*, 30 Cal. 253, also one of the cases relied on by the court in *Field v. Clark*, is one of the leading early cases adopting the enrolled bill doctrine. The court refused to consider the entries in the journals. Part of the decision discusses the exact point of the due authentication of a bill which has become law without the approval of the Governor and the question of the effect to be given to the entries in the journals which might disclose some irregularity in its passage, we quote page 277:

> "But there is no provision or law declaring how the Journals shall be authenticated, or what shall be their effect. There is nothing requiring the ayes and noes to be entered in any case, except at the option of three members. Even when an Act is returned without the approval of the Governor, although there is a provision requiring the question to be taken by ayes and noes, and that it be passed by a majority of two thirds of the members of both Houses present, there is none requiring the ayes and noes to be entered on the Journals, unless demanded by three members present, under section eleven. In this respect our Constitution differs from those of New York and Illinois, and the whole question of the effect of the Journals as evidence of the acts of those bodies is left open. They are still, like the Journals of Parliament, mere memorials — evidence for some purposes, perhaps, but not for all. They are not records in the proper sense of that term. The mode of authenticating statutes passed notwithstanding the objections of the Governor, and those which become laws by being retained by the Governor more than ten days, as provided in said Section 17, Article IV, is prescribed in the Act of 1852. (Laws

> 1852, p. 112.) When thus authenticated they are again "presented to the Governor, to be by him deposited with the laws in the office of the Secretary of State." (Sec. 1.) When so authenticated and deposited they become records. There is nothing in the Constitution, then, that requires or authorizes us to avoid, correct or in any way modify, by aid of the Journals, the Acts of the Legislature properly enrolled, authenticated and deposited with the Secretary of State as records of the Act, and we know of no provision of the statute imparting to the Journals any greater dignity than that which pertains to the Journals of Parliament. Much less is there any authority for resorting to the bill as originally introduced, with the loose tags appended containing proposed amendments, and the memoranda of the action endorsed, or to parol evidence *for the purpose of impeaching the record.*"

In the instant matter the Clerk of the House made his entries in the journal to the effect that the bill was read "by number." There is no testimony that such entry was true or that there was no further or additional reading. The Clerk was not required by law to make that entry. Opposed to that type of evidence is the certificate of the proper officers of its due enactment. This certificate is a solemn act required by law. The legislative journals should not have been considered.

V.

It was a Sufficient Reading for the House to Read Senate Bill 105 By Number Only on the Third Reading, Where the Record Indicates That the Whole Bill Was Discussed Section By Section and Fully Debated.

After Senate Bill 105 had received its second reading in the House, it received more than the ordinary attention. This is recited in the journal of the House, pages 843 to 850. These pages are devoted almost entirely to the consideration given the bill by the House. It was practically the only matter considered by the House for a period of several hours. Two separate sets of amendments were offered during this consideration. The rules were suspended and the floor was given to Mr. Marshall Keep, attorney for the Unemployment Compensation Commission. The proposed amendments were to separate sections and were offered section by section. The House rules (54) p. .... supra, provide that no amendment shall be considered until it shall have been sent to the desk in writing and read by the Clerk. We think it safe to assume that the amendment is annexed to the original and that the original is likewise read. The amendments were debated, they were voted down and the yeas and nays of the members were recorded in the journal.

The bill was read twice at length and while the journal does not show that it was formally read a third time, it seems safe to say that in the discussion of these amendments the Senate Bill must have been in effect read several times and at least read fully the necessary third time.

This was the fifty-fifth day of the Session. The Ses-

sion was still operating at 10:30 P.M. It would not be strange that the members of the House might desire to suspend the rules and shorten the time which would be consumed in again rereading the bill. Appellants contend that the journal entry on the third reading is not controlling.

There is no provision in the Organic Act commanding just when the third reading must take place. Section 13 simply says there must be three separate readings in each House. It does not say that these readings must be on any particular time or in any particular manner. As stated by our own Circuit Court of Appeals in effect in the *Boswell* case, 96 F. (2d) 239, every presumption must be indulged in favor of the validity of an act of the legislature and of course in favor of the regularity of its enactment.

The purpose, of course, of requiring three separate readings is to give full notice and opportunity for discussion and to avoid hasty legislation; and this purpose is certainly a very requisite one. However, there are thousands upon thousands of laws passed by the various state legislatures under constitutional provisions similar to that contained in the Alaska Organic Act and many hundreds of acts passed by the Alaska legislature where this constitutional provision has not been literally complied with, that is to say, where the bill has not been read in full three times. At least one would gain that impression from reading the journal.

If the court should now hold that this provision of the Organic Act must be taken literally and that each bill must be read three separate times in full in order

to be valid it would nullify nearly every act of the legislature which has been passed from 1913 to date. There are hundreds of cases holding that readings by title the third time is a sufficient compliance with the constitutional provision that all bills must be read three times. This same house journal discloses a number of other bills read by number on the third reading.

We think the holdings of the courts are uniformly in conformity with the decision of the Supreme Court of Michigan in the case of *People, ex rel, Hart v. McElroy* found in L.R.A., Volume 2, page 613 as follows:

> "As to the reading of the bill and substitute twice by the titles and only once at length, it cannot be considered at this late day, a violation of Section 19, article 4, of the Constitution, which provides that "Every bill and joint resolution shall be read three times in each house before the final passage thereof. The legislative practice of reading the same twice by title and only once at length has been maintained too long in this State to be now overthrown by the courts. It would deprive us of all statutory law. The Constitution, in terms, does not direct that the reading shall be at length, and while such reading might be the better practice, we cannot hold that it is imperatively required that it should be so read more than once. This Act, as it passed, was read once in each House at length, as appears from the journals."

In the case of *Central of Georgia Railway v. The State of Georgia*, 42 L.R.A. commencing at page 518 we find the following, quoting from another decision:

> "We do not understand this to mean, (referring

> to the constitutional requirement of three readings), that everything which is to become a law by the adoption of the bill must be read on three several days. Such a construction is not warranted by the language of the Constitution. Our legislative annals afford many instances of the adoption by one comprehensive enactment of large masses of law which were never read on three several days in both branches of the legislature."

It was held in the case of *Kentucky-Tennessee Light and Power Company v. City of Paris*, 48 F.(2d) 795, that an amendment of a statute upon the third reading, limiting its effect to classes of counties specified, did not render the statute unconstitutional as not read three times.

We submit that at the time this bill was up for discussion on March 22nd, 1947, after having been read twice as shown by the journal it was undoubtedly read many times in the reading and discussion of the numerous and sweeping amendments offered. These two readings, one of which occurred on that very day and the general discussion on the amendments indicated by the journal, surely must be held to have satisfied the requirements of the Organic Act requiring three readings. The amendments, which go, not only to Senate Bill 105, but to much of the original Unemployment Compensation law, and which were designed not only to make changes in the language of Senate Bill 105, but to make additions thereto, could not have been intelligibly read and discussed and voted upon without a full and complete reading of the whole of Senate Bill 105, section by section.

The only evidence to disprove the fact of a regular

reading, which the courts adopt under the enrolled bill doctrine, is this single journal entry made by the Clerk of the House to the effect that a motion had been made and passed to read the bill by number. We contend that the journal shows a reading in full despite the said journal entry.

VI.

The Appellee Had No "Interest" Sufficient to Give the Court Jurisdiction of This Action.

The courts have long been committed to the cardinal rule that a litigant who seeks to invoke the jurisdiction of the court must show that he has a justiciable interest. It is not enough that he allege an imaginary case or that an act of legislation is invalid. He must show that there is involved a controversy whereby he suffers or will suffer some direct injury to his person or property. In the instant case there is no controversy at all which affects the appellee.

It is alleged in paragraph I of the Amended Complaint (R. 11) that the appellee is a citizen and taxpayer of Alaska. This allegation was put in issue by the answer of the intervenors (R. 35).

At the trial, the appellee was not called as a witness and no testimony was given or adduced relative to his position as a litigant. It therefore is not proven that he is even a resident or a taxpayer and of course there is no proof that he is affected adversely or otherwise by the questioned statute.

In *State of Minn. ex rel, Smith v. Havelund County Assessor*, 223 Minn. 89, 25 N.W. (2d) 474, 174 A.L.R. 544, a taxpayer brought an action for himself and on

behalf of all other taxpayers alleging the unconstitutionality of a certain amendment to the tax law. It was admitted that the suit was brought specifically to test the validity of the act. The trial court sustained a demurrer and this action was by the Supreme Court sustained for the reason that the pleadings did not show that the relator was prejudiced or suffered any loss by that statute. That court, quoting from *Borchard, Declaratory Judgment*, page 548 A.L.R.:

> "* * * The party who invokes the power (of the court) must be able to show not only that the statute is invalid but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally." Commonwealth of *Massachusetts v. Melon*, 262 U. S. 417; See *State ex rel. Clinton Falls Nursery Co. v. County of Steele*, 181 Minn. 427; *Lyman v. Chase*, 178 Minn. 244, 6 Dunnell Dig. and Suppl. Sec. 893"

That court further stated:

> "In the absence of a justiciable controversy no jurisdiction to declare a statute unconstitutional, by declaratory judgment or otherwise, is conferred by the mere fact that the question is of interest to taxpayers in general. *County Board of Education v. Borgen*, 192 Minn. 512, 257 N.W. 92."

In the case of *Frothingham v. Mellon*, 262 U. S. 47, a taxpayer filed an action in a representative capacity for herself and other taxpayers. She challenged what was known as the Maternity Act, under which Congress provided relief assistance to states for maternal and infant care. The plaintiff did not allege any direct

violation of her individual rights. The case was dismissed. The Supreme Court stated at page 488:

> "We have no power *per se* to review and annul acts of Congress on the ground that they are unconstitutional. *That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such act.* Then the power exercised is that of ascertaining and declaring the law applicable to the controversy. It amounts to little more than a negative power to disregard an unconstitutional enactment, which otherwise would stand in the way of the enforcement of a legal right. The party who invokes the power must be able to show not only that the statute is invalid but that he has sustained or is immediately in danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally. If a case for preventive relief be presented the court enjoins, in effect, not the execution of the statute, but the acts of the official, the statute notwithstanding. Here the parties plaintiff have no such case. Looking through the forms of words to the substance of their complaint, it is merely that officials of the executive department of the government are executing and will execute an act of Congress asserted to be unconstitutional; and this we are asked to prevent. To do so would be not to decide a judicial controversy, but to assume a position of authority over the governmental acts of another and coequal department, an authority which plainly we do not possess." (Italics ours)

And in *Melton v. Railroad Commission of Texas*, 10 F. Supp. 984, the plaintiff sought to enjoin the en-

forcement of a statute of Texas, and certain orders issued by the defendant thereunder, upon the ground that the statute and orders were unconstitutional. The plaintiff had failed to comply with certain administrative regulations issued by the defendant and predicated his cause of action upon the general theory of unconstitutionality. He did not allege any invasions of his own personal property rights. In denying injunctive relief, the Federal district court of Texas adopted the following rule (page 985):

> "In arguing the case to us, both plaintiff and defendants, we think, have taken much broader ground than they can stand on. Plaintiff seems to think that it is competent for him to complain generally of the acts of the Commission, and of regulations and statutes under which the Commission purports to act, *instead* of being confined to attacking the regulations in the particulars in which they touch him. His attack, in short searches the whole field to which the law and regulations apply, and points out possibilities, under the statutes and rules, of oppressive and arbitrary action causing injury to persons and to the industry. He brings the statutes and regulations in review from the standpoint of a general critical analysis instead of, as he is required to do to obtain relief, showing that where they pinch him they violate constitutional principles. This he may not do."

Another analagous case is found in *Wallace, Secretary of Agriculture v. Ganley, et al.*, 95 F.(2d) 364. In this proceeding a number of dairy farmers in Maryland and Virginia sued to enjoin the enforcement of certain minimum price regulations issued by the

defendant as Secretary of Agriculture under the provisions of the Agricultural Adjustment Act of 1935. The plaintiffs in this case also failed to show any violation of personal rights and sought to sustain their action solely upon the theory of a representative action brought on behalf of a class of which they were members. The action was dismissed upon the basis of the foregoing rules, the court speaking as follows:

> "It is a well-recognized principle of the law of pleading that every bill must contain in itself sufficient matters of fact, *per se*, to maintain the pleader's case. (Page 366)
>
> "Where an attack was made upon the constitutionality of a state law, the court 'will not go into imaginary cases.' (Page 368)
>
> "The judicial power does not extend to the determination of abstract questions. (Page 368)
>
> "Claims based merely upon assumed potential invasions of rights are not enough to warrant judicial intervention; there must be threatened or actual impairment of rights." (Page 368)

Another case illustrating the application of the foregoing rules to "imaginary cases" is found in the case of *Hatch v. Reardon*, 204 U. S. 152. The petitioner had been convicted under a New York statute for failure to pay state stamp taxes upon the sale of certain stocks. In his appeal he attacked the constitutionality of the state law upon two grounds, one being that the act contravened the "commerce clause." The transaction upon which his conviction was obtained had occurred wholly within the State of New York and his argu-

ment, based upon the contravention of the "commerce clause," was based entirely upon hypothetical situations. In sustaining his conviction, the supreme court, speaking through Justice Holmes, said at page 160:

> "The other ground of attack is that the act is an interference with commerce among the several states. Cases were imagined, which, it was said, would fall within the statute, and yet would be cases of such commerce; and it was argued that if the act embraced any such cases it was void as to them, and, if void as to them, void altogether, on a principle often stated.
>
> "But there is a point beyond which this court does not consider arguments of this sort for the purpose of invalidating the tax laws of a state on constitutional grounds. This limit has been fixed in many cases. It is that unless the party setting up the unconstitutionality of the state law belongs to the class for whose sake the constitutional protection is given, or the class primarily protected, this court does not listen to his objections and will not go into imaginary cases, notwithstanding the seeming logic of the position that it must do so, because if for any reason, or as against any class embraced, the law is unconstitutional, it is void as to all."

In the case of *Chicago & Grand Trunk Ry. Co. v. Wellman*, 143 U. S. 339, the court in passing upon the validity of a statute of the State of Michigan establishing and regulating certain passenger tariffs within the state, ruled against the contentions of the railway company by use of the following language at pages 344, 345:

"The theory upon which, apparently, this suit was brought is that parties have an appeal from the legislature to the courts; and that the latter was given an immediate and general supervision of the constitutionality of the acts of the former. Such is not true. Whenever, in pursuance of an honest and actual antagonistic assertion of rights by one individual against another, there is presented a question involving the validity of any act of any legislature, state or Federal, and the decision necessarily rests on the competency of the legislature to so enact, the court must, in the exercise of its solemn duties, determine whether the act be constitutional or not; but such an exercise of power is the ultimate and supreme function of the courts. It is legitimate only in the last resort, and as a necessity in the determination of *real, earnest and vital controversy between individuals.* It never was the thought that, by means of a friendly suit, a party beaten in the legislature could transfer to the courts an inquiry as to the constitutionality of the legislative act." (See also *Muskrat v. U. S.*, 219 U. S. 346, and *Asplund v. Hannett*, 249 Pac. 1074) (Italics ours)

In the case at bar there is nothing before the court in any manner affecting the appellee different from any other citizen or resident. The question presented by the pleadings is purely political. It is alleged that the legislature passed an act irregularly. The judgment entered by the court, and the relief granted, does not change or alter, benefit or damage, or in any manner affect the appellee. There was no justiciable issue before the court.

CONCLUSION

For the foregoing reasons, appellants urge that the decree of the District Court should be reversed with directions to dismiss the proceedings.

Respectfully submitted,

RALPH J. RIVERS
Attorney General for Alaska

J. GERALD WILLIAMS
FAULKNER & BANFIELD
MEDLEY & HAUGLAND
W. C. ARNOLD
Attorneys for Appellants

APPENDIX TO BRIEF

Page 843: ***Journal of the House.***

SENATE BILL NO. 105 was read the second time.

It was moved by Mr. McCutcheon, seconded by Miss Garnick, that the following amendments to SENATE BILL NO. 105, offered by the Committee on Labor, Capital and Immigration, be adopted:

Delete Section 2(1)(6)(F) (From the U.C.C. Laws.)

Amend Subsection 2(g) "Employing Unit" means any individual or type of organization, including the Territory of Alaska, or any partnership, etc. (of the U.C.C. Law.)

Add Subsection 7(c)(2)(1). Not withstanding any other provisions of this Act the Territorial Government shall, in lieu of contributions required of employers under this Act, pay into the fund an amount equivalent to the amount of benefits paid to individuals based on wages paid by the Territory. If benefits paid an individual are based on wages paid by both the Territory and one or more other employers, the amount payable by the Territory to the fund shall bear the same ratio to total benefits paid to the individual as the base-period wages paid to the individual by the Territory bear to the total amount of base-period wages paid to the individual by all his base-period employers.

The amount of payment required under this section shall be ascertained by the Commission quarterly and shall be paid from the general fund of the Territory, except as provided in the next sentence, at such time and in such manner, as the Commission may prescribe. If an individual was

paid benefits on the basis of wages paid by the Territory from a special administrative fund, the payment by the Territory into the unemployment compensation fund shall be made from such special administrative fund.

Page 844:

Subsection 3(d)(3). In addition to the benefits payable under Section 3 of this Act, each eligible individual who is unemployed in any week shall be paid with respect to such week a dependency allowance for each dependent relative residing in Alaska as follows:

For the first such dependent relative, five dollars ($5.00);

For each additional dependent relative, two dollars ($2.00);

Provided, however, that no eligible individual shall receive dependency allowances in excess of eleven dollars ($11.00) for any one week of unemployment.

The dependent's allowance is not to be taken into consideration in calculating the claimant's total amount of benefits under Subsection 3(d)(1) hereof.

The provisions of this section shall apply only to benefit years established after June 30, 1947.

At the request of Mrs. Engstrom, and by unanimous consent of the House, the privilege of the floor was extended to Mr. Marshall Keep, attorney for the Unemployment Compensation Commission for the purpose of discussing the proposed amendment to SENATE BILL NO. 105.

Thereupon the House recessed until 8:30 o'clock P.M.

AFTER RECESS

It was moved by Mr. Frank Johnson, seconded by Miss Garnick, that the House recess until 9:00 o'clock P.M.

The question being, "Shall the House recess?" the roll was called with the following result:

Yeas, 11:—Barnett, Engstrom, Garnick, Hope, F. Johnson, McCutcheon, Meath, Nolan, Ost, Pollard, Snider.

Page 845:

Nays, 11:—Almquist, D. Anderson, Edw. Anderson, Coble, Egan, Hoopes, M. Johnson, Joy, Laws, Vukovich, Mr. Speaker.

Absent, 2:—Huntley, Newell.

Motion failed, and so the House did not recess.

The question then being, "Shall the amendment be adopted?" the motion failed, and so the amendment was not adopted.

It was moved by Mr. McCutcheon, seconded by Miss Garnick, that the following amendment to SENATE BILL NO. 105, offered by Mr. McCutcheon, be adopted:

AMENDMENT TO SENATE BILL 105

On page 1, line 14, after the letter "(d)" in parentheses, add a comma and the following: "Subsection 9(b), Section 10(a) 3, Section 10(b), Section 11(a)",

(AND)

On page 9, line 8, after "Section 3" strike all of the balance of line 8 and all of line 9 and insert in lieu thereof the following:

Subsection 9(b). "Accounts and Deposits". The Commission shall designate a treasurer and cus-

todian of the Unemployment Compensation Fund (THE TERRITORIAL TREASURER SHALL BE EX-OFFICIO THE TREASURER AND CUSTODIAN OF THE FUND AND) who shall administer such fund in accordance with the directions of the Commission and shall issue warrants upon it in accordance with such regulations as the Commission shall prescribe. He shall maintain within the Fund three accounts:

(1) a clearing account,
(2) an Unemployment Trust Fund account, and
(3) a benefit account.

All moneys payable to the Fund, upon receipt thereof by the Commission, shall be forwarded to the . . .

Page 846:

Treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to Section 14 and 2(i)(6)(E) of this Act may be paid from the clearing account upon warrants issued by the Treasurer under the direction of the Commission. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United State of America to the credit of the account of this Territory in the Unemployment Trust Fund, established and maintained pursuant to Section 904 of the Social Security Act, as amended, any provision of law in this Territory relating to the deposit, administration, release or disbursement of moneys in the possession or custody of this Territory to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this Territory's account in the Unemployment Trust Fund. Except as herein otherwise provided, moneys in

the clearing and benefit accounts may be deposited by the Treasurer, under the direction of the Commission, in any bank or public depository in which general funds of the Territory may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. Moneys in the clearing and benefit accounts shall not be commingled with other Territorial funds, but shall be maintained in separate accounts on the books of the depository bank. Such money shall be secured by the Depository law of this Territory; and collateral pledged for this purpose shall be kept separate and distinct from any collateral pledged to secure other funds of the Territory. The Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the fund. All sums recovered for losses sustained by the fund shall be deposited therein. The treasurer shall give bond conditioned upon the faithful performance of his duties as treasurer of the fund in a form prescribed by statute or approved by the Attorney General, and in an amount approved by the Commission. All premiums upon bonds required pursuant to this Section, when furnished by an authorized surety company or by a duly constituted governmental bonding firm, shall be paid from the Unemployment Administration Fund.

Page 847:

On page 9, line 8, strike Sec. 3, insert the following:

Section 4. Subsection 10(a)(3). The Commission shall appoint a director who shall be the chief executive of the Commission, whose compensation shall be (Five Thousand Two Hundred and Fifty Dollars ($5,250.00) Per Annum) fixed by the Commission, payable in equal monthly in-

stallments; he shall be appointed for a term of four years and may be removed at the pleasure of the Commission. No person shall be appointed Director unless he is a citizen of the United States, a resident of this Territory and has been such resident at least five years immediately preceding his appointment. The Director shall be subject to the supervision and direction of the Commission and shall perform such duties as the Commission may assign to him.

On page 9, after Section 4, insert the following:

Section 5. Section 10(b) Compensation of Commissioners. One of the members of the Commission so appointed shall be chairman of the Commission. The members of the Commission shall not receive any fixed salary but shall be paid at the rate of (Ten Dollars) ($10.00) fifteen dollars ($15.00) per day plus necessary expenses while engaged in the actual performance of their duties, but no commissioner shall in any event receive more than One Thousand Dollars ($1,000.00) salary in addition to expenses for any calendar year. The salaries of all commissioners shall be paid from the unemployment compensation administration fund. The chairman of the Commission shall be designated by the Governor.

On page 9, after Section 5, insert the following:

Section 6. Section 11(a)—"Duties and Powers of Commission." It shall be the duty of the Commission to administer this Act; and it shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such rereports, make such investigations, and take such other action as it deems necessary or suitable

to that end. Such rules and regulations shall be effective upon publication in . . .

Page 848:

the manner not inconsistent with the provisions of this Act, which the Commission shall prescribe. The Commission shall determine its own organization and methods of procedure in accordance with the provisions of this Act, and shall have an official seal which shall be judicially noticed. Not later than the thirty-first day of January of each year, the Commission shall submit to the Governor and the Legislature a report covering the administration and operation of this Act during the preceding twelve months and shall make such recommendations for amendments to this Act as the Commission deems proper. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the Commission in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period.

On page 9, after Section 6, insert the following:

Section 7. Effective date. This Act shall become effective June 30th, 1947.

The question then being, "Shall the amendment be adopted?" the roll was called with the following result:

Yeas, 9:—Almquist, Edw. Anderson, Barnett, Garnick, Hope, F. Johnson, McCutcheon, Ost, Pollard.

Nays, 13:—D. Anderson, Coble, Egan, Engstrom, Hoopes, M. Johnson, Joy, Laws, Meath, Nolan, Snider, Vukovich, Mr. Speaker.
Absent, 2:—Huntley, Newell.

Motion failed and so the amendment was not adopted.

It was moved by Mrs. Engstrom, seconded by Mr. D. Anderson, that the Rules be suspended as to SENATE BILL NO. 105, that it be considered re-engrossed, advanced . . .

Page 849:
to third reading, read by number only and placed in final passage.

Thereupon Mr. McCutcheon demanded a Call of the House.

It was moved by Mr. Hoopes, seconded by Mr. Coble, that the Rules be suspended and that the proceedings on the Call of the House be dispensed with.

Thereupon Mr. McCutcheon demanded a Call of the House on that motion. The Speaker ordered the Sergeant-at-Arms to bring before the bar of the House the absent Representatives, Mr. Huntley and Mr. Newell.

Thereupon the Speaker declared the House at recess until the arrival of Messrs. Huntley and Newell.

AFTER RECESS

Pursant to recess the House was called to order at 10:30 o'clock P.M.

The question being, "Shall the Rules be suspended as to SENATE BILL NO. 105?" the roll was called with the following result:

Yeas, 16:—D. Anderson, Edw. Anderson, Coble, Egan, Engstrom, Hoopes, M. Johnson, Joy, Laws, Meath, Newell, Nolan, Ost, Snider, Vukovich, Mr. Speaker.

Nays, 8:—Almquist, Barnett, Garnick, Hope, Huntley, McCutcheon, F. Johnson, Pollard.

Motion carried and SENATE BILL NO. 105 was read the third time by number only.

The question being, "Shall the Bill Pass?" the roll was called with the following result:

Page 850:

Yeas, 17:—D. Anderson, Edw. Anderson, Barnett, Coble, Egan, Engstrom, Hoopes, M. Johnson, Joy, Laws, Meath, Newell, Nolan, Ost, Snider, Vukovich, Mr. Speaker.

Nays, 7:—Almquist, Garnick, Hope, Huntley, F. Johnson, McCutcheon, Pollard.

And so the Bill passed.

The Speaker announced that he had signed SENATE BILL NO. 105 and ordered the same returned to the Senate.

RULES OF THE HOUSE

Page 1033:

RULE 54. Each amendment made by a committee to a bill shall be in writing on a separate slip of paper, and shall be securely attached to the original bill by a paper fastener. The report of the committee shall also contain a statement of the amendments agreed to by the committee. Any committee report on a bill not conforming with this rule shall be returned by the Chief Clerk of the House to the committee for compliance

with this rule without further order by the House. Upon second reading, the bill shall be read section by section in full, and be subject to amendment. No amendment shall be considered by the House until it shall have been sent to the desk in writing and read by the Clerk. All amendments adopted on the second reading shall be securely attached to the original bill by a paper fastener.

Amendments rejected by the House shall be passed to the Minute Clerk, and the Journal shall show the disposition of such amendments.